

UNITED STATES COURT OF APPEALS

DEC 2 2004

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TAIKECHA WADE,

Defendant-Appellant.

No. 04-2122

(D.C. Nos. CIV-04-113 MCA/LCS
and CR-02-886 MCA)
(D. New Mexico)

ORDER*

Before **TACHA**, Chief Judge, **BRISCOE**, and **HARTZ**, Circuit Judges.

Taichecha Wade, a federal prisoner appearing pro se, seeks a certificate of appealability (COA) to appeal the district court's dismissal of her 28 U.S.C. § 2255 motion. We deny the request for a COA and dismiss the appeal.

Issuance of a COA is jurisdictional. Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). A COA can issue only “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented

*This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.

are adequate to deserve encouragement to proceed further.” Miller-El, 537 U.S. at 327.

After careful review of all of the filings and the record on appeal, we conclude the requirements for issuance of a COA have not been met.

Wade pleaded guilty to possession with intent to distribute 100 kilograms or more of a mixture containing a detectable amount of marijuana, and was sentenced to 60 months’ imprisonment. She did not file a direct appeal. Wade filed her § 2255 motion on February 3, 2004, alleging an “unconstitutional search and seizure,” “[v]iolation of the Second Stop Law,” and “[u]nlawful traffic stop.” ROA, Doc. 1 at 4. The district court dismissed the action sua sponte, finding Wade’s claims were barred. The court found her entry of an unconditional guilty plea waived all nonjurisdictional defenses, citing United States v. Kunzman, 125 F.3d 1363, 1365 (10th Cir. 1997). Further, the district court concluded her claims were procedurally barred because she did not raise them on direct appeal, citing United States v. Cox, 83 F.3d 336, 341 (10th Cir. 1996). We agree with the district court’s conclusions.

We DENY the request for a COA and DISMISS the appeal for substantially the same reasons stated by the district court in its order filed April 27, 2004.

Entered for the Court

Mary Beck Briscoe
Circuit Judge